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ARTICLES
OF
REGULATION
Concerning the
SESSION.
WITH
His MAJESTIES
Approbation thereto.

EDINBURGH,
Printed by the Heirs and Successors of *Andrew Anderson*, Printer to the Kings Most Excellent MAJESTY, 1695.

WILLIAM R.

OUr Soveraign Lord having Conſidered the following Articles of Regulation, concerning the Seſſion, Approves and Ordains the ſame to be put to Execution, and to have full force, ſtrength, and effect, conform to the late Act of Parliament made thereanent: And Ordains the ſame, together with this Approbation, both ſuperſcribed by His Royal Hand, to be Recorded in the Books of ſecret Council and Seſſion, and thereafter Publiſhed and Printed, that none pretend ignorance. Given at the Court at Kenſington, *the twenty ninth day of* April, 1695. *and of His Majeſties Reign the ſeventh Year.*

By His Majeſties Command

J. JOHNSTOUN.

WILLIAM R.

ARTICLES
OF
Regulation, Concerning the SESSION.

THE Commiſſioners appointed by His Majeſty, with the Advice and Conſent of the Eſtates of Parliament, for Regulation of Judicatories, in diſcharge of the Truſt committed to them, and after long and mature deliberation, Do in the firſt place, for the effectual preventing and reſtraining of Abuſes, and exorbitant Exactions in the Seſſion, and for the more ſpeedy, eaſie, and ſure Adminiſtration of Juſtice by the Lords thereof, humbly offer to His Majeſties Approbation, the Acts, Orders and Conſtitutions following,

1. That in the extracting of Acts or Decreets, whatever Sheets are repeated out of former Acts already extracted, and payed for in the ſame Proceſs, ſhal in the Act or Decreet wherein they are repeated, be only payed for as Copies at the price of eight *ſhill. Scots per* ſheet, and no more to be given to the Copier; and that the *quota* of Lines, or quantity of Writing of theſe ſheets, be at leaſt as many lines, and as much writing in each ſheet as was determined by the former Act of Regulation, and that what ever new ſheets ſhal be added in the poſterior Act, or in the Decreet, ſhal pay each ſheet as an new ſheet, conform to the former Regulation, and that a broken ſheet if any be, be payed for as a whole ſheet.

2. *Item*, For each Bill preſented in the Inner-houſe, there ſhal only be payed for preſenting, fifty eight *ſhill. Scots*, and for preſenting the written Anſwers made to the ſame, as much; And that in this maner, *viz.* That the ſaid Payments be firſt payed in by the Parties to the Collector aftermentioned, and by him marked upon the ſaid Bill, and Anſwers before they be preſented to the Lords.

3. *Item*, That where Bills and Anſwers are inſerted in Acts or Decreets, every Bill and every Anſwer be reckoned in order to payment, a ſheet; and that for the ſame ſo reckoned, there ſhal only be payed fourteen *pence Scots* for the Bill, and as much for the Anſwers, though either the Bill or Anſwers may be ſhorter or longer than a ſheet, and that this price thus regulate, for preventing the trouble of Compting, be in the place of the three *pounds Scots* in uſe to be payed for the ſheets of Decreets or Acts, the reſt of the ſheets always paying as above.

4. *Item*, That all the Clerks both of the Inner-houſe and Outer-houſe be put under pay by yearly Sallaries or Fees, and moſt ſtrictly diſcharged of all other takings whatſoever, under the pain of deprivation, and of the ſum of one years Sallary beſide; And that the Cognition and tryal of their obſervance hereof be by the Lords of Seſſion, at the inſtance of any who ſhal complain. And farder that in caſe any party in any Proceſs, ſhal think fit to complain of the Clerk for undue taking, the Lords ſhal receive the Complaint ſummarly, and call both the Clerk and Partie or Perſon alledged to have given, and firſt make the ſaid Partie or Perſon declare in writing under his hand whe-

ther he hath given or not; and what he hath given, and then take tryal of the matter by Oath of the Clerk complained upon, or by any other method of Tryal the Lords shal think just.

5. *Item*, That all the said Clerks give their Oaths at their admission, and renew the same again the beginning of every Session, that they shal observe this Regulation, and that this Oath be conceived in the *Formula* following.

I A. B. Do by this my great and solemn Oath, In the presence of the Almighty GOD, *promise and swear, that in my Office of Clerk, or for the discharge thereof in any part, I shall not, either by my self, or any other person or way whatsoever, take from any Partie or Person whatsoever, either Money or good Deed, or Bond, or Promise of Money, or good Deed directly or indirectly, in any sort over and above the yearly Sallary and Fee, allowed to me for my said Office, and that I shal content my self with the said Sallarie, and hold my self honestly and strictly to the same,* So help me GOD.

6. *Item*, That the said Sallaries be as follows, *viz.* for the Principal Clerks or the Clerks of the Inner-house, to each of them four thousand *merks Scots* yearly; and to the under Clerks, or Clerks of the Outer-house to each of them fifteen hundred *merks* yearly, to be payed out of the Dues of their whole Offices by the Collector aftermentioned. But if in any year, the saids Dues shal happen not to extend so far, that then the Dues collected shal be divided amongst them proportionably, the Collectors Fees always included in manner after-mentioned, and with this provision, that the preceeding inlakes shal be made up, and payed out of the first of the excress of the succeding years, and the *superplus* of the said Dues, after compleating of the said payments, shal be disposed of by the Lords of Session in this manner, *viz.* In the first place, for repairing of such of the Clerks who have lately bought their Places at dear rates, which are not yet sufficiently Compenced, and thereafter for such other Uses concerning the good of the Colledge of Justice, as the saids Lords shal think fit.

7. *Item*, That Extracters have the allowance of fourteen *pence per* sheet of all Acts and Decreets, and no more, and that this fourteen *pence* be payed in by the Leidges to the Collector after-mentioned, over and above, and together with the three *pounds Scots* to be payed for ilk sheet as formerly, and that the Collector give the said fourteens back to the saids Extracters quarterly, to each of them as they shal instruct their share and interest in the same, by their Minut-Books, or other sufficient Documents.

8. *Item*, That nothing be payed by way of Drink-money or otherwise, either to the Clerks, whether Principal or Under-Clerks, or to their Servants, or Dependers, either for calling Summons, or Acts, or for Copies of Suspensions, Interloqutors or Minuts, or giving in, or getting out of Papers, or getting up, or giving back Processes, or for any other Cause, except what is above allowed, and is to be payed in to the Collector above-mentioned.

9. *Item*, That there be a Collector Nominate and Chosen by the Lords for Collecting, Ingathering and Keeping all the Dues and Payments above allowed, and that he have a yearly Sallary of eighteen hundred *merks Scots*, to be payed out of the same Fond with the Clerks, and who shal bear a proportional deduction with them, in case of short-coming, and have the said short-coming or inlake supplyed in the same manner with them *ut supra*; and that at his admission, and in the beginning of every Session he take the same Oath prescribed to the Clerks *mutatis mutandis*, and that he find sufficient Caution for the discharge of his Office; and that he mark and sign the payments made as above appointed, upon every Act, Decreet, or other Writ that are to pass his hands: And that the saids Writs make no Faith unless by him marked as said is: And to the effect the Clerks may have a sufficient Check upon the Collector, That the Collector sign their Minute-Books once every week, at such a time as he and they shal agree.

10. That

10. That for hereafter in admitting Clerks of the Session, whether for the Inner or Outer-house, the Lords of Session observe the following Rule, *viz.* That they admit no Person to be a Clerk in the Inner-house, unless he be an Advocat or Writer to the Signet, and hes served as such three years before; And next, that they take strict Tryal of the Ability and Integrity of all Clerks they shal admit, for performing their respective Offices, and that every Clerk in the Inner-house, shal at his Admission make Faith, and purge himself by his great Oath; that he hath not given, nor promised, directly or indirectly for procuring or obtaining his said Office and Place, more than four thousand *merks*, or an years Sallary; and that the Clerks of the Outer-house make Faith, and purge themselves in like manner, that they have not given nor promised, directly or indirectly, for procuring and obtaining their said Office and Place, more than one thousand *pound Scots*, or an years Sallary thereof.

11. *Item*, That to prevent all slackness in the Clerks, in discharge of their Offices, the Lords take course that the Leidges be by them diligently and faithfully served, under such Rules and Certifications as they shall think meet.

12. *Item*, That the Registers immediatly under the Clerk-Registers keeping in the lower Parliament House, or any where els, be patent to all the Leidges, without any payment or other acknowledgment of that sort, to be made to any for sight of the Minut-Books; and that for searching in the saids Registers there be only payed a Rix Doller to the Registers Servant; And that for the Extracts to be taken out of the same, there be payed as follows, *viz.* Of any Writ past and registrat since the year 1660, the double of the Extracts of Decreets given out by the Clerks of Session, which makes six *pounds Scots* for each sheet, and this six *pounds* to be both for writing and signing: And of any Writ registrat before the year 1660, the treble, which makes nine *pounds Scots* for each sheet writing and signing, *ut supra*. *Item*, That there be only paid to the Register, for any Petition given in to be presented in Parliament twenty *merks Scots*; and for the first Extracts of Acts, and Decreets of Parliament, in favour of private Persons, one hundred *merks Scots*; and for the second Extracts thereof twenty *merks* money foresaid; And that there be nothing more paid for the said Petitions or Extracts under the name of Drink-money, or upon any other pretence, to any other Person whatsoever: And that the Register exact no more in time coming for his Sign and Subscription nor a *merk Scots*, as was in use before the year 1686. And that if the Register or his Servants transgress in the Premisses, the Register shal be Tryed and Censured by the Lords of Session, and his Servants shal be in like manner tryed by them, and shal be censurable by Fyning, Imprisonment, or otherways, as the Lords shal see cause.

13. That the side Bar, commonly so called in the utter House, be wholly taken away; that is to say, That no Lord of the Session be for hereafter allowed to call any Cause there; except only that the Ordinary on the Bills, may go there to his wonted place and station, and call and hear parties, in order to the passing or refusing of Bills, according to the custom before observed: And that it be farder declared, that if any of the said Lords, shall go and call Causes at the side Bar, hereby discharged; neither the Parties, nor their Advocats, nor the Clerks shall be obliged to answer, or attend; nor shall their not answering, or not attending, be prejudicial to them in any sort. *Item*, That to supply any good use, that the foresaid side Bar, might have served for; that for hereafter the Lord Ordinary in the utter-house, shall have and make use of his sitting and time on the Bench, in the utter-house, every *Saturnday* forenoon during the Session, for calling such Causes, as having been called by him, in order of the Rolls, on the proceeding days of that week, and not put to any period, were formerly in use to have been called again by him at the side Bar; And for that end, that no Acts be called on the said *Saturnday*, until the Lord

Ordinary go through the ſaids Cauſes, to be called again as ſaid is: And that the Ordinary take care on the preceeding days of the week, the Clerks may have ſufficient time to call their Acts, if they find the ſaid Calling prejudged by the ſaid appointment of the *Saturnday*, in lieu of the ſide Bar.

14. That to ſhorten Proceſſes, Acts, and Decreets, the Lord Ordinary that hears the Cauſe, and is to report the ſame, take in the Minuts from the Clerks, after they are ſhowen to both parties; and that if needful, he reform the ſame, and thereupon report the Cauſe, notwithſtanding of any thing in the contrary, contained in the late Act of Parliament anent Advocats their ſubſcribing of the Minuts of debate, and that the Minuts ſo ſigned by the Ordinary, be patent to the parties, in the Clerks hands.

15. That Cauſes called in preſence, and appointed by a particular deliverance to be heard on a certain day, be peremptorly called that day, according to the order, and date of the ſaid deliverance; and that a Roll of them be made for that end; and that the Cauſe ſo ordered, ſhall have the ſame right to be called at its day, as Cauſes inrolled in the Books of Inrollment, whoſe order the Lords cannot alter; and that no Cauſes be called by the Ordinary Roll that day, until the Cauſe thereto remitted be heard, and diſcuſſed.

16. That all points, that the Lords upon Reports, or Bills, ſhall think fit to hear in preſence, be either immediatly called and debated, as to that point, or otherways be Inrolled in the Roll of Cauſes, in the Inner-houſe, according to the date of the Lords deliverance; and that for that end, the Parties Procurators who demand a Hearing, be always ready to debate, or that otherways the Lords may determine upon the former debate.

17. That Acts and Decreets, againſt more Debtors than one, may be Extracted in parts relating particularly to any of the Defenders, as if they did proceed upon a ſingle Lybel; And that Acts and Decreets upon competition of Rights, may be Extracted in parts, each Party extracting the Decreet of his preferance to others, with the grounds thereof, ſo as the party poſtponed needs not extract the debate, anent his being poſtponed; but only cauſe relate in general, that ſuch Rights are preferred to him, as, *V. G.* If there be five Competitors, the Party preferred in the firſt place, needs extract no more, but the production of all their Intereſts, with the grounds of his preference to the other four, and he that is preferred in the ſecond place, needs not extract the grounds and debate whereupon the firſt is preferred to him, but only after a ſimple Narrative, that the firſt was preferred, deduce the Grounds, and debate whereupon he is prefered to the laſt three, without inſerting the grounds of debate betwixt the three that are poſtponed to him: And ſo for the reſt of the Competitors, and that how ſoon any Competitor is preferred he may extract his preference at his pleaſure, in the manner abovementioned albeit the Competition as to the reſt be not determined.

18. That in time coming, Decreets *in foro* be not reduced and laid open upon Nullities, furder than *ad hunc effectum*, to hear the Parties anent redreſſing his Prejudice by that Nullity; and that it be declared, that the reſt of the Interlocutors in the foreſaid Decreet do ſtand, *tanquam res hactenus judicata*.

19. That in all Concluded Cauſes, when the Lord appointed to prepare the ſame for Adviſing, doth Adviſe the ſaids Cauſes: the Advocats for the Parties, are either to object at the Preparing what they have to ſay againſt the Report to be made, or to make their ſaid Objections within at moſt fourteen days thereafter; which Objections with the Anſwers thereto, ſhall be conſidered by the ſaid Ordinary, and ſhall be ſubjoyned to the Report. And in caſe this be neglected, the Party neglecting ſhall not be heard at the Adviſing, until he Conſign an Amand of five *Dollars*; and that no Objection be made at the Adviſing againſt the Act, but againſt the Report, as to the Points proven or not proven.

20. That

20. That there be no Decreet of Certification upon Summons of Reduction and Improbation, or of ſimple Improbation in abſence, unleſs the Cauſe be firſt called in the ordinary manner, before the Lord in the Outer-houſe; and that the ſaid Lord do then appoint it to be *Inrolled*, according to the Date of its Calling: and if when the ſaid Summons comes to be called in its Courſe, the ſaid Decreet of Certification ſhall ſtill happen to be given in abſence; then it ſhal remain unextracted for the ſpace of four Weeks at leaſt thereafter.

21. That in the caſe of other Decreets in abſence, after calling of the Summons by the Clerk in the Outer-houſe in the ordinary manner, the Cauſe be Inrolled in the beginning of the next Weeks Roll, and Inrolled accordingly; and at the next calling in its Courſe, either Decreet be given in abſence, or if the Defender compear; that he be admitted to ſee and anſwer; and that the Cauſe be again Inrolled, and Proceeded in thereafter, in the ordinary manner.

22. That in all Cauſes where Probation is admitted, and made by Writ or Witneſſes; the Lord Ordinary for Concluded Cauſes, who prepares the ſame for Reporting, may conſider the ſaid Probation; and if he find it clear, that he mark it to be ſo: and that in that caſe, the Probation and Cauſe be Adviſed ſummarly without order of the Roll.

23. That for the remeiding of the Abuſe of the multiplying of Bills, and of their ſuperfluous length; the Lords ſhall upon occaſion, as they find any Bill to be groundleſs, or in its length ſuperfluous and litigious, Fyne the Advocat, Subſcriber and Party, in ſuch a pecuniary Mulct, to be inſtantly payed, as they ſhall judge reaſonable. And furder, that in all Cauſes where the Lords at the Concluſion thereof, ſhall find the Succumber to have been calumnious or litigious; they ſhall take in an Accompt from the Party prevailing, upon his Oath of the Expenſes, and Dammage that he hath been put to in that Proceſs, and that then they Decern: or in caſe of Extravagancy, Tax and Modifie the ſaid Expenſes and Dammage, to be payed by the Succumber to the Party prevailing as ſaid is: and this be more ſquarely and largely done in time coming, for the better preventing of calumnious and litigious Pleas and Proceſſes.

24. That in place of the Allowance, formerly in place of Adjudications, or Appryſings, there be only for hereafter, a ſhort Abbreviat made of the Decreet of Adjudication, after the manner of the ſaid Allowance, and that this Abbreviat be at the pronouncing of the ſaid Decreet, Signed by the Lord Pronouncer thereof, and given in to be Recorded within threeſcore days after the Pronouncing of the ſaid Decreet, conform to the Act of Parliament anent Recording of Appryſings: and that the Recorder for Recording thereof, take no more than fourty ſhilling *Scots*, whatever be the Sums of Money or Lands contained in the ſaid Decreet of Adjudication, or whatever may be the length thereof: and that the perſon Ingiver of the ſaid Abbreviat, his Name be marked, and he Sign to it, as is appointed at the Regiſter of Seaſins: and that the Recorder of the ſaid Abbreviat, do likewiſe mark immediatly after Recording thereof, whether the Decreet whereof it is the Abbreviat, be then Extracted or not; and in caſe the Recorder of the ſaid Abbreviats, ſhall not Record the ſame duely as ſaid is, but ſhall happen to take in any Abbreviat after the ſaid threeſcore days, that he be therefore upon Tryal, deprived by the Lords of Seſſion.

25. That for the cutting off of groundleſs and expenſive Pleas, and Proceſſes in time coming, the Lords of Seſſion ſuſtain no Reduction of any Decreet-Arbitral, that ſhall be Pronounced hereafter upon a ſubſcribed Submiſſion, at the Inſtance of either of the Parties Submitters, upon any Cauſe or Reaſon whatſoever, unleſs that of Corruption, Bribery or Falſhood, to be alledged againſt the Judges Arbitrators who pronounced the ſame.

26. That in all Actions of Sale of Bankrupts Lands upon the late *Acts* of Parliament, either depending, or to be hereafter Raiſed; the Ranking of

the Creditors, and others concerned, shall proceed, and first be Concluded by Decreet, at the least to the Avail of the price of the Lands found, and Stated by the Lords of Session, before the said Lands be Exposed to Roup and Sale.

27. That in the Case where a Matter brought before the Council, is by them Remitted to the Session, to be there summarly Discussed: the same shall not be brought in before the saids Lords of Session, to be Debated and Discussed in the Forenoon, to the hinderance of the ordinary Course of the Roll, and to the prejudice of the Leidges therein concerned: but shall only if the Lords think fit, be brought in to be Debated and Discussed as said is, in such an Afternoon as they shall appoint.

28. That to evite the Confusion and Abuses that oft-times happens in Actions against Debitors, where a multitude of Debitors are called; for hereafter in any Action to be intented before the Lords of Session against Debitors, there be not above six Defenders called in the same Summons.

29. That notwithstanding of the Regulation formerly made of Advocats Fees in the Act of Parliament 1672; yet to the effect, the said Regulation may be better observed in time coming, that the saids Fees be Regulat according to the Quality of the Persons who shall employ them in manner following: *viz.* That for one Consultation as is therein defin'd, a Nobleman shall not give more to an Advocat than nine *Dollers*, or two *Guineys* at the most. That a Baron or Knight, shall not give more than seven *Dollers*, or one *Guiney* and a half at most. That any other Gentleman or chief Burgess, shall not give more than four *Dollers*, or one *Guiney* at most. And that all the rest of the Leidges, or any other person, shall not give more than three Dollers at most. And furder, that there shall not be above three Advocats called to the Consulting the Drawing of the Information, after Dispute to the Lords: and that to the Advocat that Draws the same, (of these three) may be given a full Fee, according to the foresaid Regulation; and to the other two, the half thereof, and no more.

30. That in all Processes before the Session, it shall be lawful to any of the Parties, in any Step of the Process, to Object against the other: that he either by himself, or some other for him, hath given or promised to one or other of his Advocats, or to some other person, directly or indirectly for the Advocats behove, more than is allowed by the foresaid Regulation. And in this case if the Party confess, or be holden as Confest, then he shall be immediatly Fyned by the Sentence of the Lords, in one thousand pounds *Scots*: whereof one thousand *Merks* to be payed to the Party objecter, and five hundred *Merks* to the Poors Box. And that Letters on a simple Charge of six days, and other Executorials necessary, be direct for payment thereof. And furder, if the Party discovered to be guilty as said is, shall happen to be the Pursuer, then the Process shall stop, until the foresaid Fyne be payed as said is, without prejudice of the foresaid Execution for the same. And in case the Advocat alledged to have received more than the said Regulation, shall not after the Givers confessing, or being holden as confest, purge himself by his Oath in the Terms above set down, that he has received no more, then he shall be Fyned in the quadruple of the Fee, allowed to him by the Regulation, and transgressed as said is, to be payed into the Poors Box. And furder, the said Advocat transgressing, not purging himself as said is, shall be debarred from the Exercise of his Imployment for the space of three Months of Session time, without compting the time of Vacation.

31. That the whole Articles of Regulation, contained in the Act of Parliament 1672, be declared to be in full force, except in so far, as they are hereby Innovated or Altered.

Given at the Court at Kensington *the* 29th. *day of* April 1695, *And of His Majesties Reign the* 7th *year.*

By His MAJESTIES *Command,*

J. JOHNSTOUN.

WILLIAM R.

Right Truſty and right well Beloved Couſin and Counſellor; Right truſty and entirely Beloved Couſin and Counſellor, Right truſty and right well Beloved Couſins and Counſellors, Right truſty and well Beloved Couſins and Counſellors, Right truſty and well Beloved Counſellors, Truſty and well Beloved Counſellors, and truſty and well Beloved, We greet you well. Whereas We have Approven and Signed the Regulations, Agreed on by you, and Tranſmitted to Us, concerning the Seſſion, Advocats and Clerks, and that We have Ordered them to be Printed; We do heartily Approve of your Zeal and Diligence in the ſaid Matter, with which We are the better *S*atisfied that you have been Unanimous in your Reſolutions. We Require you to go on, as ſoon as conveniently you can, to Enquire further into any Abuſes committed in any other Judicatories or Offices of Truſt, according to the Tenor of the Act of Parliament: And having Reſolved upon ſuch Regulations as you ſhall find neceſſary for Remedying the ſame, to Tranſmit them to Us, that We may Signify Our Pleaſure thereanent. In the mean while, We Aſſure you of Our Countenance, and of all due Encouragment to Finiſh what you have Begun, ſince We are deſirous of nothing more than that *Juſtice* ſhould be Adminiſtrated, and all Offices Executed in a manner, as fair, and as little Burthenſome to Our People as is poſſible: So We bid you heartily Farewel. Given at Our Court at *Kenſingtoun*, the 29th Day of *April*, 1695. And of Our Reign the 7th Year.

By His Majeſties Command,

J. Johnſtoun.

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